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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 704 (LAP)

5 BRANDON BECKER,

6 Remote Conference

7 Defendant.

8 -----x

9 New York, N.Y.
June 12, 2024
10 10:00 a.m.

11 Before:

12 HON. LORETTA A. PRESKA,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 VLADISLAV VAINBERG

Assistant United States Attorney

18 BOBBI C. STERNHEIM

19 Attorney for Defendant

-AND-

20 FASULO GIORDANO & DIMAGGIO LLP

BY: MICHAEL EDWARD GIORDANO

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1 (The Court and parties present via video)

2 THE COURT: Good morning, ladies and gentlemen.

3 MS. STERNHEIM: Good morning, Judge Preska.

4 MR. VAINBERG: Good morning, your Honor.

5 MR. GIORDANO: Good morning, your Honor.

6 THE COURT: How are you?

7 MR. VAINBERG: I'm doing well. Thank you.

8 THE COURT: Okay, friends. Have you had any

9 additional time -- is the court reporter on?

10 (Pause)

11 THE COURT: Thank you so much.

12 Have you folks had any additional conversations since
13 your letters?

14 MR. GIORDANO: This is Michael -- sorry, Vlad.

15 MR. VAINBERG: Your Honor, this is AUSA Vlad Vainberg.

16 We have not. Particularly since there was one more
17 letter that the defense put in after 5:00 p.m. yesterday, so we
18 haven't spoken substantively.

19 THE COURT: Okay.

20 And, Mr. Giordano, I don't know if you put the letter
21 in or whatever happened, but it was a lesson for my interns not
22 to put in a substantive letter with lots and lots of
23 attachments after 5:00 p.m. We read it, have it onboard, but
24 it's perhaps not the best practice.

25 MR. GIORDANO: Yes, your Honor. Understood.

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1 THE COURT: All right.

2 Let me ask you this: Mr. Becker, you understand,
3 don't you, that you have the right to be present in court with
4 the judge and all the lawyers in New York, right?

5 You're muted, sir.

6 You're still muted.

7 MS. STERNHEIM: We can't hear you.

8 THE COURT: Unmute.

9 THE DEFENDANT: Is that working?

10 Yes, your Honor, I do understand that. Thank you.

11 THE COURT: Okay.

12 Do I correctly understand that in this instance,
13 today, you've decided to waive that right in order to avoid the
14 aggravation of flying to New York and flying back to
15 California? Is that right?

16 THE DEFENDANT: Yes, your Honor, that is correct.

17 THE COURT: And you did that after consulting with
18 your lawyers, correct?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Counsel, is there anything else you want
21 me to ask Mr. Becker on this topic?

22 MR. VAINBERG: Not from the government, your Honor.

23 MR. GIORDANO: Not from the defense, your Honor.

24 THE COURT: Thank you.

25 I find that Mr. Becker has knowingly and voluntarily

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1 waived his right to be present in court today.

2 May I ask the government why we think that at this
3 point, knowing what we know now, we need to impose home
4 confinement and the like on Mr. Becker? And I do note that,
5 apparently, the supervising pretrial officer in California has
6 recommended that the home confinement be discontinued.

7 MR. VAINBERG: So, your Honor, obviously, prior to the
8 incident that caused the disqualification of former counsel, in
9 which Mr. Becker set up that interview, he was not on home
10 confinement. That is a new condition, we think correctly added
11 by your court, in response to that bail violation. We
12 understand the argument that it's now been six months or so
13 since that time, and so the government's view is that if your
14 Honor feels that that is sort of an appropriate amount of time
15 to remove that condition, but to continue to impose all other
16 conditions, including electronic monitoring, to permit
17 Mr. Becker to travel for a new job, the government is fine with
18 that.

19 THE COURT: Okay.

20 Mr. Giordano, I don't understand fully what the issue
21 is with the electronic monitoring. I don't go to trade shows
22 and conferences, but I'm not so sure I'm familiar with, say,
23 walking through a metal detector or what.

24 MR. GIORDANO: Yes, your Honor. I think there are two
25 really practical considerations.

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1 The first is that, given the nature of the business,
2 being in the aerospace/defense industries, that these
3 conferences have enhanced security. That's not to say that
4 perhaps there couldn't be arrangements made in advance where
5 Mr. Becker could gain entry to them or they could be made aware
6 of this. We just don't know -- every show is different, and
7 every conference is different -- whether any particular show, it
8 would be a bar for him to gain entry with the electronic
9 monitor.

10 Now, obviously, people have knee replacements and
11 different things that make it difficult to go through security,
12 and we have ways of dealing with those. I just can't say, as
13 it stands, that the electronic monitor would be a barrier for
14 him to gain entry and that being a principal role in this job
15 opportunity.

16 And, second, I think --

17 THE COURT: I didn't understand the first one.

18 MR. GIORDANO: So if there are metal detectors --

19 THE COURT: How do we know that there are?

20 THE DEFENDANT: Judge -- may I interject, Michael,
21 Mr. Giordano?

22 MR. GIORDANO: Briefly, yes.

23 THE DEFENDANT: Yes, it's not just trade shows, it's
24 going to Lockheed Martin secured areas as well, and getting
25 padded down and explaining the entire process of my prosecution

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1 when I'm just there to really help them with their imaging of
2 their aircraft and helping them sell products to governments or
3 private companies.

4 So it's not just trade shows. It's going to offices,
5 corporate offices, secured areas, along with the trade shows,
6 is the primary reason for travel, but I do have to travel
7 places like that as well.

8 Excuse me. Thank you very much for your time.

9 THE COURT: Okay.

10 Mr. Giordano, I think you mentioned in your letter
11 your view that there were other ways that pretrial services
12 could keep tabs on Mr. Becker other than the ankle bracelet. I
13 wasn't quite sure what those were about.

14 MR. GIORDANO: So my understanding is that previously,
15 the Central District of California – and I'm just grabbing the
16 name of it – had recommended the use of maybe SmartLINK, I
17 believe it's called, and I am just getting the name of it.
18 It's a method they use that is a phone application that gives
19 realtime location monitoring. I believe that had been rejected
20 by the Southern District, but California is the monitoring
21 district, and if it's a method that they use, and is approved
22 by the court and by pretrial, I don't think the Southern
23 District's position, if it is still their position, that they
24 don't recognize that use of that application as a form of
25 monitoring should be a barrier, because California is the

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1 district that monitors him. And we'd be happy to make
2 Mr. Becker available or conference with pretrial in the Central
3 District of California to better understand the practical
4 implications of it and if it's a viable alternative.

5 THE COURT: So -- wait.

6 MS. STERNHEIM: Judge --

7 THE COURT: Oh, Ms. Sternheim?

8 MS. STERNHEIM: Hello, Judge.

9 THE COURT: Good morning.

10 MS. STERNHEIM: I just wanted to make a short point on
11 that.

12 The SmartLINK system, as I understand it, has a much
13 larger range. The Southern District of New York is very small
14 compared to the Central District of California, and, whereas,
15 here, we sometimes run into issues where a defendant's location
16 would exceed the capabilities of electronic monitoring, the
17 SmartLINK system is broader, and I believe that is why it is
18 used in certain districts. It may not yet be used here -- maybe
19 it's something that will be used in the future -- but it is
20 something that is used more widely in districts that have
21 larger geographical distances.

22 THE COURT: And, Ms. Sternheim, do you know if it is
23 nationwide?

24 MS. STERNHEIM: That, I do not know. And certainly
25 any questions the Court has, we will seek answers. And if the

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1 Court feels it appropriate to have the monitoring officer
2 available – it's a little early there now, so we couldn't do
3 it, it's three hours different – we will make that available to
4 the Court, and certainly if there are any questions that you
5 have, we will get answers for you quickly.

6 THE COURT: And is it your understanding that, as
7 Mr. Giordano said, it works off of one's cell phone?

8 MS. STERNHEIM: That is correct. With smartphones
9 now, there are all kinds of monitoring capabilities. For
10 instance, some parents use it for their children, some people
11 use it for their older parents. I imagine it works along those
12 lines. The technicalities of it, I can't recite to you, but,
13 as I said, we will get you whatever information you like.

14 THE COURT: Mr. Vainberg, can you shed any light on
15 any of this?

16 MR. VAINBERG: Yes, your Honor.

17 I was going through my emails. One of the last times
18 this came up was in October 2020, when our S.D.N.Y. pretrial
19 services officer, Jonathan Lettieri, emailed Victor Sherman,
20 who was then defendant's counsel, regarding Mr. Sherman's
21 request to use SmartLINK. And in Mr. Lettieri's pretrial
22 services email, he noted that the officer on this in CDCA let
23 me know that Mr. Becker had brought up the possibility of using
24 SmartLINK, a cell phone application, and that you may be filing
25 a petition with the Court regarding this. And then

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1 Mr. Lettieri writes: "I wanted to let you know that our office
2 does not use SmartLINK as a viable form of location monitoring.
3 We are not currently employing or offering it to our court as a
4 possible condition to impose. Considering the issues with the
5 current equipment, we would ask that the defendant install a
6 landline in his home so the equipment could be routed through
7 that instead of a cell tower."

8 This is from October 2020. I don't have -- sitting
9 here today, I wasn't sure that SmartLINK was going to be an
10 issue that would come up, so I don't know if that's still the
11 view of S.D.N.Y. pretrial, but I did want the Court to be aware
12 that it is something that our pretrial office has considered
13 and did not think it was appropriate.

14 I'd also -- your Honor, I am not aware, in my
15 experience of electronic monitoring, wearing an ankle bracelet
16 posing an impediment to attending conferences or going to trade
17 shows any more, as Mr. Giordano says, having a pacemaker or
18 other metal equipment. It seems to be more of an issue of
19 inconvenience for Mr. Becker to describe why he has an ankle
20 monitor on, rather than an actual impediment to him doing his
21 job. And given that these shows are somewhat hypothetical, it
22 seems like a speculative concern as well.

23 THE COURT: Mr. Giordano, do you want to address the
24 hypothetical issue?

25 MR. GIORDANO: I think it's more than a hypothetical,

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1 your Honor. I think it's a reality that he is going to have to
2 gain entry into offices and conferences that have heightened
3 security measures. His employer, as he represents to me, is
4 well aware of his situation, and if he qualifies for employment
5 there, despite the pending prosecution, not being able to gain
6 entry to these places with the electronic monitor, it is not
7 the fact that he is a defendant facing criminal prosecution,
8 but it is the fact -- because his employer is aware of that, as
9 he informed me -- but that having this electronic monitoring
10 device is an independent impediment from him gaining entry to
11 these places, and especially in light of the fact that there
12 are reasonable alternatives, that being the SmartLINK app,
13 which is used in the Central District of California, as I
14 understand it. We also propose that he check in. With today's
15 technology, there are a number of ways that he can -- whether
16 it be by a photo or FaceTime or sending his location, there are
17 a number of ways that he can show where he is at any given
18 time, that are perhaps better than wearing the ankle monitor.

19 And to Ms. Sternheim's point: If he is traveling, if
20 the Court was amenable to having restrictions where he can
21 travel out of state with approval of pretrial or the Court, the
22 ankle monitor would pose -- using an alternative method of
23 determining Mr. Becker's actual location is more practical as
24 well, because if the ankle monitor -- the technology doesn't
25 allow him to be monitored out of state with the ankle monitor,

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1 then SmartLINK or some other alternative would better determine
2 his location.

3 THE COURT: All right.

4 Mr. Vainberg, do you want to be heard any more as to
5 that? And do you wish to be heard with respect to a curfew?

6 MR. VAINBERG: With respect to -- just briefly,
7 your Honor, thank you. What's speculative is that there is a
8 conference that Mr. Becker wouldn't be able to gain entry to
9 because he is wearing an electronic monitor. There's simply
10 been nothing presented to the Court that simply wearing an
11 ankle bracelet would somehow prevent him from gaining entry,
12 any more so than he would be prevented from gaining entry
13 because he is currently facing federal felony charges.

14 And then, obviously, the difference between the
15 smartphone application and an ankle monitor is that the phone
16 application relies on him having the phone with him.
17 Obviously, it's not unheard of, of folks snipping their ankle
18 bracelets, but it's a bit more difficult to do than just
19 dropping your phone off and doing something else. So it is a
20 more secure manner of monitoring defendants, and one that's
21 used here in this district.

22 With respect to a curfew: If your Honor is proceeding
23 to lift home confinement, we're happy to be reasonable with
24 respect to a proper curfew, that takes into account any
25 conferences the defendant has to go to, which he would have to

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1 get preapproved through pretrial services and a bail
2 modification order, but a general curfew of 9:00 p.m. would be
3 appropriate.

4 MS. STERNHEIM: Judge, may I be heard on this briefly?

5 THE COURT: Yes, ma'am. Yes, ma'am.

6 MS. STERNHEIM: I just would like to say that if
7 electronic monitoring is lifted, as we requested, and the
8 SmartLINK system is put in place, one of the obligations and
9 requirements would be that Mr. Becker has his phone at all
10 times. If he did not, then there would be a basis for the
11 Court to find him in default. But, certainly, there are
12 ways -- if he had the monitor, and there was a way he needed to
13 check in at his location with the phone, he could do that, and
14 he would be instructed, as the Court would, that one of his
15 conditions would be that he needs to have his phone with him at
16 all times, which is a very standard thing that all of us
17 basically have at all times. So it isn't anything unusual.

18 With regard to the curfew: It was my understanding --
19 and both Mr. Giordano and government counsel will correct me if
20 I am wrong -- there was a time when he was on a curfew from
21 7:00 a.m. to 11:00 p.m., and we would ask that those
22 restrictions of time be reimposed; the difference being that in
23 the central district, he has to use a car, there are severe
24 traffic issues. If he had a meeting in the evening, he would
25 need sufficient time to get home. I don't think that there is

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1 anything unreasonable about it being till 11:00 o'clock.

2 THE COURT: What else, friends?

3 Does anybody else want to be heard on any other terms
4 and conditions?

5 MR. GIORDANO: From the defense, no, your Honor.

6 MR. VAINBERG: Nothing further from the government.

7 THE COURT: All right.

8 Based on Mr. Becker's performance and the submissions
9 of counsel, the home confinement condition will be lifted.

10 The ankle bracelet will be lifted, but I would ask for
11 counsel to confer with pretrial to figure out the phone issue
12 and any additional way of checking in that might be required.

13 The curfew will be 7:00 a.m. to 11:00 p.m., subject to
14 modification to the extent that pretrial allows it for
15 employment.

16 Business travel can be throughout the United States,
17 subject to approval in advance by pretrial.

18 Personal travel will remain confined to the Central
19 District of California and the Southern and Eastern Districts
20 of New York.

21 The monetary bond will be continued.

22 Have I forgotten anything, friends?

23 MS. STERNHEIM: I would just add, Judge – and this is
24 very, very technical – that, obviously, to get from the Central
25 District of California to the Southern District, you have to

O6CKBECC

1 travel through many other districts, and it just should be
2 implied that for travel purposes, he can go from California to
3 New York, as necessary, for court appearances.

4 THE COURT: Certainly, but I thought they had airports
5 in the Central District of California. Am I wrong?

6 MS. STERNHEIM: No, you do, but you are in the air,
7 and if a flight stops, let's say, in Chicago, he would then be
8 in another district.

9 THE COURT: Certainly. All right, all right.

10 MS. STERNHEIM: I'm just being technical, Judge.

11 THE COURT: All right.

12 MR. VAINBERG: And, your Honor, if I may, I hear that
13 your Honor is lifting the ankle bracelet as a form of location
14 monitoring, but just so it's clear on the order, we'd still ask
15 that the Court order location monitoring through a phone
16 application or other alternative means, other than an ankle
17 bracelet, to make sure that pretrial knows that that's still a
18 condition.

19 THE COURT: Exactly.

20 And, again, I will ask you folks to confer with
21 pretrial, send me a draft bail modification order, and the
22 removal of the ankle bracelet becomes effective when the bail
23 modification order is signed.

24 Is there anything else, friends?

25 MR. GIORDANO: Nothing further from the defense,

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1 your Honor. Thank you.

2 MR. VAINBERG: Nothing from the government. Thank
3 you, your Honor.

4 THE COURT: Mr. Becker, do you have any questions of
5 what is required of you?

6 THE DEFENDANT: No, ma'am. I'm clear. Thank you so
7 much, your Honor.

8 THE COURT: Thank you.

9 Andrew, do you need anything from any of us?

10 (Pause)

11 THE COURT: Very good.

12 Good morning, ladies and gentlemen. Thank you.

13 (Adjourned)